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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JAYCOB TYLER KUTZERA, Defendant.	CR 17-48-GF-BMM BRIEF IN SUPPORT OF UNOPPOSED MOTION TO DISMISS COUNT 32
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The United States files this brief in support of its Unopposed Motion to Dismiss Count 32 of the Indictment. Rule 48(a) of the Federal Rules of Criminal Procedure provides that the government may move to dismiss an indictment, or in this case a count in the indictment, with leave of the Court. Fed. R. Crim. Proc. Rule 48(a). The leave of court requirement is “to protect a defendant from prosecutorial harassment, e.g., charging, dismissing, recharging ...” *Rinaldi v.*

United States, 434 U.S. 22, 29 n. 15 (1977).

“The government often charges multiple counts in its indictment, only to add or subtract counts during the course of the prosecution. When the government moves to dismiss counts in an indictment, the district court has limited discretion to deny the motion. The limitation on its discretion is based on the separation of powers. [T]he presumption of regularity supports the prosecutorial supports their prosecutorial decisions.” *United States v. Garcia-Valenzuela*, 232 F.3d 1003, 1007 (9th Cir. 2000) (citations omitted).

Here, the United States moves the Court to dismiss Count 32 of the Indictment. During the course of the prosecution, the United States has re-evaluated the evidence supporting Count 32 and determined that the evidence of criminal conduct supporting Count 32 will be sufficiently covered under the remaining counts in the Indictment. As such, it is not in the interest of justice to pursue a conviction under Count 32.

Based on the foregoing, the United States hereby moves to dismiss Count 32.

DATED this 16th day of February, 2018.

KURT G. ALME
United States Attorney

/s/ Cyndee L. Peterson
Assistant U.S. Attorney
Attorney for the Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. CR 47.2(c) the word count of the attached brief contains 246 words, excluding caption, and certificates of service and compliance.

/s/ Cyndee L. Peterson
Assistant U.S. Attorney
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on 2/16/18, a copy of the foregoing document was served on the following persons by the following means:

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